IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6418 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI B DESAI

Versus

CHARITY COMMISSIONER

Appearance:

MR TS NANAVATI for Petitioners
MR DN PATEL, ASST. GOVT. PLEADER for Respondent No. 1
M/S MG DOSHIT & CO for Respondent No. 2
MR SUNIT S SHAH for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/08/2000

C.A.V. JUDGEMENT (Per Patel, J.)

Learned advocates appearing in this matter were given extensive audience as if the matter was being heard finally; By this judgment, we are treating the matter as if it is heard and disposed of finally.

2. The petitioners, three in number, without disclosing as to how the public at large would be adversely affected by a decision rendered by the Gujarat Revenue Tribunal in Appeal No. TEN/AA/48/96 dated 24th June 1999 confirming the decision rendered by the Charity Commissioner, Ahmedabad under section 36 (3) of the Bombay Public Trusts Act, 1959 (hereinafter referred to as the Act) bearing No. 36/23/94, has filed this petition, styling it as a Public Interest Litigation.

3. The Maganbhai Karamchand Station Dharmashala Trust, a Public Charitable Trust, registered under the Act, (hereinafter referred to as the Trust), is in possession of an immovable property which is used partly as Dharmashala, situated opposite Ahmedabad Railway Station bearing Survey No. 666 to 672 of Railwaypura Ward on a piece of land admeasuring 1480 sq. yds. and also an area of approximately 482 sq. yards exclusive of the super structure which has been rented to tenants. Part of the property is covered under the roadline laid by the Ahmedabad Municipal Corporation in accordance with the TP Scheme. From the sketch which is produced on record, it appears that there are nine small rooms which are offered to the passengers/visitors to the City. The entrance of the Dharmashala abuts to the main road which leads from Sarangpur to Kalpur Darwaja. From, the sketch it appears that there is a big chowk/open space, admeasuring 70 ft. 6 inches X 73 ft 9 inches, having some construction in one corner. Just opposite the entrance there are rooms which are offered to visitors coming to the City. On all the four sides of the chowk there are verandahs (balconies). Before entering the building there is a covered otta and thereafter a wide verandah. There are two shops just near the entrance gate behind which there is a small verandah connecting the verandah inside the chowk. There are other six shops also in the premises. The property has a ground floor and first floor. In all there are ten tenants, out of which one A.K.N. Satiya is occupying two survey numbers on the ground floor as well the first floor. The total rent of all the shops per month comes to Rs.412-50 and rent per annum comes to Rs.4950-00. The description of the property is given at Annexure IV which is a valuation report. Reading the report, it appears that it is a very

old property. There are sundry shops, offices, etc. The frontage of the property is on the main road and that too opposite main Railway Station. It is completely blocked by tenants. There is a hair cutting saloon, a person providing typing services, a restaurant and shops dealing in kerosene. The first floor structure is in occupation of the tenants. The tenants are using the bathrooms and toilet provided in the rear portion of the property since years. The roadline which is tobe implemented could not be implemented in view of one or the other hurdle created by the tenants by filing litigations. The road could not be widened. Non-widening of the road causes lot of inconvenience to the people. One Trustee of the said Trust, has filed an affidavit pointing out the details with relevant documents.

4. So far as the petitioners are concerned, they have come out with the case that on behalf of the Trust, an application was made under section 36 of the Act read with rule 24 of the Bombay Public Trust Rules 1961 for permission and sanction for alienating the immovable property. One Panchlok Appts. Owners Association signed Memorandum of Agreement on 24th November 1993 and was willing to pay a sum of Rs.1,25,55,555/- in consideration of the property. Advertisement was given in the local daily newspapers inviting offers with minimum price of Rs.1,10,00,000/-. The petitioners have averred that they reliably learnt that nine offers were received. It is alleged that higher offers were never considered. One Prerana Builders Pvt. Ltd., nominated on its behalf Panchlok Appts. Owners Association for executing agreement for sale. Earnest Money of Rs.25 lakhs is alleged to have been paid. The application was made to the Charity Commissioner. One U.A. Chaudhary made an offer of Rs.1,30,00,000/- but no action was taken in that behalf. Charity Commissioner was of the opinion that wide publicity was necessary for the higher offer and the Charity Commissioner, vide Annexure 'B' directed promulgation of the advertisement in three local daily newspapers. The minimum price for the property was fixed at Rs.1,25,55,555/- of which 25% was to be tendered in the form of a Demand Draft. Petitioners in paragraph 2.5 have alleged that one U.A. Chaudhary offered Rs.1,40,00,000/- and one Prataprao Sonawala who had stated that the property is worth Rs.1,50,00,000/-. It is also stated in the said paragraph that one A.N. Shelia C/o. Hotel Sagar also offered a sum of Rs.1.40 Crore and handed over a bearer cheque in the sum of Rs.35 lakhs. It is contended that the offers of U.A. Chaudhary and Prataprao Sonawala were rejected on the ground that the same were not supplemented with any proof

of payment and the offer of A.N. Shelia was rejected on the ground that the earnest money was paid by way of cheque and not Demand Draft. It is alleged that the Trustees adhered to the alleged resolution and confirmed the deal with Panchlok Apts. Owners Association. It is alleged in the petition that the intention of the Trustee was to favour the said Panchlok Apts. Owners Association.

5. It is alleged in the petition in paragraph 2.6 that an offer of an intervener with a firm offer supported by an Account Payee Draft of Rs.35 lakh came to be placed on the record on 29th December 1994. The offer was made for a sum of Rs.1.40 Crores. The Trustees returned the said draft on the ground that a decision has been taken. It is further alleged in the petition that the Charity Commissioner came to know that the property is still intentionally disposed of at a lower price, and, therefore, ordered re-promulgation of the advertisement, fixing the upset price at Rs.1.40 Crores. It is stated in paragraph 2.7 of the petition that the Trust applied for review of the decision of the Charity Commissioner which came to be rejected on 3rd August 1995. It is further stated that the offer made by one Lalitkumar Jain on 13.7.1995 at Rs.1.40 Crore was enhanced to Rs.1.51 Crores and above. It is further alleged that on 13.7.1995, Panchlok Apts. Owners Association improved the offer to Rs.1.41 Crores.

6. In paragraph 2.8 it is contended that Spl. C.A. No. 9891 of 1995 was filed by Panchlok Apts. Owners Association, and an interim direction was given in the said petition that within three months from 7.3.1996 the application pending before the Charity Commissioner should be disposed of, keeping it open for the Charity Commissioner to assess the value of the property except by way of public auction by re-advertisement. The petitioners have come out with a case that Panchlok Apts. Owners Association raised the offer to Rs.1.61 Crores while said Lalitkumar Jain raised his offer to Rs.2,25,25,255-25 and the Charity Commissioner directed the said Lalitkumar Jain to pay 25% thereof of by Demand Draft. It is further alleged that though the draft was ready on 10.7.1996, due to sudden illness of Lalitkumar Jain's mother the draft could not be made available, hence time was granted. In the meanwhile Civil Application No. 5371 of 1996 was preferred by the Office of the Charity Commissioner seeking for extension of time and learned Single Judge of this Court by an order dated 3.7.1997 extended time upto 15.8.1996. It is further stated that time was again extended till 31st October

1996. It is further alleged by the petitioners that on 17.7.1996 A.N. Shelia, one of the prior objector, placed on record a detailed application along with an offer for Rs.1.66 Crores along with copy of Bank Draft dated 2.7.1996 for Rs.56,31,314/being 25% of the price offered by Lalitkumar Jain. [It is not made clear in the petition as to why A.N. Shelia tendered the copy of the Draft of margin money in connection with the offer made by Lalitkumar Jain]. However, it is alleged that the said Lalitkumar Jain arrived at some understanding with Panchlok Apts. Owners Association and the said Lalitkumar Jain left the battle. It is thus alleged in the petition that the Trust is passing off the property at a substantially low price than the true, fair and correct market value of the property. In paragraph 2.8 at page 15 of the petition, the petitioners have averred that: (sic)

"The petitioners therefore having come to learn that a valuable property by a service trust is out to be disposed off by formation of internal cartel by which the thorn of the highest bidder of Rs.2.25 Crore having genuinely bidded was for best reasons not pursued in as much as it could have finally put the entire transaction which the Panchlok Apartments Owners Association's transaction into jeopardy of it being cancelled"

7. It is further alleged that A.N. Shelia had given a firm offer of Rs.1.75 Crores, however as the period for passing appropriate orders was expiring the Charity Commissioner has confirmed the offer of the respondent No.4 by its order dated 30th October, 1996.

8. In paragraph 3 of the petition it is alleged that the proceedings before the Charity Commissioner were not conducted in accordance with law. The petitioners have averred that though on the record there was a bid of Rs.2.25 Crores with earnest money, the offer was not processed further. The petitioners have though stated that they came to know about the cartel, they have not disclosed the source of the information from which they came to know about the cartel. The petitioners ought to have disclosed the source of information and their reasons to believe the information to be true. The petitioners, having no connection with each other and having no connection with the Trust, the Trust property and the transaction in question, bare words without anything more to substantiate their say, cannot be taken to be true at their face value.

9. It appears that this Court issued notice only on condition of the petitioners depositing a sum of Rs.10,000/- initially.

10. Having read the petition, it becomes more than evident that the petitioners are closely connected with the tenderers, otherwise the petitioners could not have got all these details. That apart, the address of A.N. Shelia who submitted the offer is C/o. Hotel Sagar, Kerosene Bazar, Opp. Kalupur Railway Station, Ahmedabad. That address is of the property in question itself.

11. The Gujarat Revenue Tribunal heard the appeal at the instance of A.N. Shelia wherein various contentions were raised and the Appellate Tribunal, after hearing the learned advocates appearing for the parties, confirmed the order made by the Charity Commissioner, and dismissed the appeal. Before the Tribunal it was pointed out that despite three months time given, nobody came forward with revised offer. Appellant before the Tribunal submitted the offer without earnest money as required, i.e. by way of Demand Draft. Even thereafter time was extended and the appellant before the Tribunal did not submit any further application. As per the order passed by this Court, the offers made by Lalitkumar Jain and Panchlok Apts. Owners Association were required to be considered. The Tribunal was persuaded with the fact that Lalitkumar Jain has not given correct and proper address in his letter, otherwise the letter written to him would not have come back. It is alleged that advocate Mr. K.V. Shelat collected the Demand Draft on behalf of Lalitkumar Jain (page 5 of the order of the Tribunal). However, the draft never reached the proper person. What was the reason for the said Lalitkumar Jain to submit his offer along with a xerox copy of the Draft. Was it not a systematic method adopted by the occupants of the building to delay the proceedings? On behalf of the Trust it was pointed out that Mr. Shelia had no locus standie. He had no right to challenge the proceedings. It was pointed out to the Tribunal that Mr. Shelia has interest in Lalitkumar Jain otherwise there was no reason as to why Mr. Shelia should give Lalitkumar Jain's offer to the Charity Commissioner. It is also clear from the record that on behalf of Lalitkumar Jain, xerox copy of the draft was produced and not the original draft. If the copy of the draft could reach the advocate, why the original draft could not reach the advocate? Despite the fact that time was given to the said Lalitkumar Jain, why he did not pay the money? From the record it appears that Lalitkumar Jain forwarded a copy of the draft issued by Union Bank of India on 2.7.1996 on its Ahmedabad

Service Branch bearing No. 37605. The said draft was for a sum of Rs.66,31,340/- and was issued by Agripada Branch of the Bank at Bombay. If the draft was dated 2.7.96, what was the reason for the said Lalitkumar Jain to make a request for time on 10.7.96? It appears to us that with a view to retain possession of the property, various methods are adopted in the instant case so as to delay the proceedings.

12. One has to also consider the matter from commercial point of view. Rs.1,25,55,555/- was offered by Prerana Builders on 30th October 1993. Income Tax Department granted permission under section 269 UC of the Income Tax Act. If that amount would have been accepted at the relevant time, the Trust would have earned sizeable interest thereon. The present rate of interest is 9% but at the relevant time, it was 12%. However, if the loss is calculated even assuming loss of simple interest at 9%, the loss is to the tune of approximately Rs.79,00,000/-. The Trust could have earned much more interest if invested in other permissible investment schemes such as ICICI or mutual funds etc. After the decision is rendered by the Tribunal what prompted these petitioners to file this petition is not explained by the petitioners at all. The decision is rendered by the Tribunal on 24th June 1999. The Trust could not enter into an agreement in view of the present proceedings initiated by these petitioners. If the agreement would have been executed as per the order passed by the Tribunal as per the sealed bids, the Trust would have been able to dispose of the property at Rs.1.61 Crores much before. Even if the loss suffered by the Trust is calculated at simple rate of interest at 9% from the date of the order made by the Tribunal, the loss of interest would be to the tune of Rs.14,49,000/-.

13. It is required to be noted that there is an order passed by the Tribunal under the Act and that could have been challenged by the aggrieved party and not an outsider.

14. We have heard the learned advocates. The proceedings cannot be treated as bonafide proceedings. In our opinion, when the offers were scrutinised by the Charity Commissioner and the same were accepted by the Charity Commissioner, nothing can be alleged against the Trust. In the instant case, the Charity Commissioner has taken proper care. Even the jurisdiction of this Court was invoked and ultimately the person who made a show that he was ready and willing to pay higher amount has disappeared from the scene. If the transaction would

have been completed, the Trust could have utilized the amount for the benefit of the persons for whose benefit the Trust was formed and the property was thrown in Trust.

15. Mr. Doshit, learned advocate appearing for the Trust submitted that as a matter of fact, looking to the condition of the building, no visitors come to stay in the Trust's property. In good old days, people used to come but in view of better facilities now available at other places, people are not coming to the Dharmashala. It is further pointed out the use of a toilet and a bathroom which are in the premises of the building are in the exclusive use by the tenants and even if by chance someone comes he is not in a position to get these facilities. He submitted that the shopkeepers are interested in retaining the possession of the property as it is in the prime locality of Ahmedabad City and they are interested in delaying the proceedings in one or the other way. He submitted that even the Town Planning Scheme Road could not be constructed in view of the proceedings initiated by the occupants of the property who are interested in continuing with the possession of the property to run their business. From the affidavit in reply, it is very clear that the tenants occupying the shops in the front portion approached the City Civil Court at Ahmedabad challenging the acquisition of the land for TP Scheme road and obtained stay orders restraining Ahmedabad Municipal Corporation from acquisition, without joining the Trust as a party. It is pointed out that widening of the road could not be completed. It appears that the tenants are interested in prolonging the litigation and it further appears that realizing that nothing can be down, these proceedings have been initiated. The persons aggrieved have not challenged the order.

16. As indicated earlier, the petitioners have approached this Court only after disposal of the appeal by the Tribunal and not before that. The public advertisement was in the press much earlier. How all of a sudden, after disposal of the appeal by the Tribunal, the petitioners came to know about the proceedings before the Charity Commissioner and the High Court?

17. It is required to be noted that the three petitioners are residing in three different localities, namely, one at Dudeshwar, one at Naranpura and the third at Paldi. It is not indicated in the petition as to how all the three came to know jointly about the disposal of the property by the Trust and the proceedings initiated

in the subject matter. The petitioners have come out with a version that the issue involved in the petition affects the public at large and more particularly large number of poor and middle class visitors to the City of Ahmedabad who utilise the premises of the Dharmashala. From the record it appears that in view of the fact that the property is very old and the front portion is occupied by tenants, there are no visitors in the Dharmashala.

18. It is required to be noted that before disposal of the property, the Trust has approached the Income Tax Department, which is the best authority and has granted certificate in accordance with law accepting the price proposed by the Trust. Otherwise, the Income Tax Department would have auctioned the property. Further the Charity Commissioner examined the matter and after satisfying itself, ultimately, permitted the Trust to dispose of the property.

19. The Trust has also taken assistance of property valuers, viz. M/s. Amin & Desai, who have submitted a valuation report, taking into consideration the nature of the property, place where the property is situated and the occupancy of the property. The said valuer has considered the rental method as well as land and building method for arriving at the approximate price of the property. The valuer has opined that the property which was not occupied by tenants and which was in possession of the Trust would fetch Rs.1,09,93,000/on the basis of the Land and Building method. They have considered 998 sq. yards of land, super value of the old ground floor structure for arriving at the aforesaid value. So far as tenant occupied property is concerned, the value is approximately fixed at Rs.62,000/- only and thus, the total value is fixed at Rs.1,10,55,000/-. Hence, it cannot be said that the price at which the property is sought to be disposed of is a throw-away price.

20. The proceedings initiated before the Charity Commissioner was examined by the Tribunal constituted under the Act and thus there is a seal of judicial proceedings. It is in these circumstances, when the Charity Commissioner has exercised the jurisdiction in accordance with law and has allowed the Trust to enter into an agreement, there was no reason for these three different outsiders to approach this Court, more particularly when the decision was confirmed by the Appellate Tribunal. In the instant case, there was no default on the part of the State or the Public authority. The Trust, which is a private Trust, with the sanction of

the Charity Commissioner, having a seal of approval of the Tribunal, is permitted to dispose of the property, and there is no question of misuse of power by any public authority or the State authority. The Court would not like to overstep the limits of its judicial function and would not like to trench upon the functions of other authorities, more particularly when the Tribunal has approved the action of the Charity Commissioner. The parties to the proceedings, if aggrieved, could have approached this Court by invoking jurisdiction of this Court under Article 227 of the Constitution, but certainly these three petitioners who have not explained as to how they know each other and how they are jointly interested in the disposal of the property by the private trust, had no business to approach this Court in the facts and circumstances of this case. This Court would not exercise its discretion and would not intervene at the instance of a meddlesome interlopers or busybodies.

21. It would also be not out of place to assess the 'interest' of the petitioners in this Public 'Interest' Litigation. It is the say of the petitioners in paragraph 1 of the petition that the issue involved in this petition affect the people at large more particularly the large number of poor and lower middle class visitors to the City of Ahmedabad who utilise the services of the Dharmashala at the 'most down to earth' rates. There is also a similar mention in paragraph 2.1 of the petition. However, in the whole petition, absolutely no details are given about the number of persons who utilised the services of the Dharmashala in the past few years; Absolutely no details are placed about the number or estimated number of passengers who are in need of such services; There is not a whisper about the inconveniences likely to be caused to the visitors if the property is not made available to the visitors. The whole thrust of the petition is disposing of the property at lower rates to builders/developers by forming internal cartel as against higher rates offered by other parties. Therefore, the 'interest' in this Public Interest Litigation is not the conveniences or otherwise of the visitors to the City if this property is not available for the visitors, but the 'interest' seems to be delaying the proceedings and somehow retaining possession of the property by the present occupiers. Such a petition, in the garb of Public Interest Litigation with hidden motive cannot be, and must not be, entertained by this Court.

22. In the instant case there is no breach of fundamental right of any citizen or a class of persons.

There is no question of safeguarding the right of the downtrodden people. Therefore, in the facts and circumstances of this case, we are satisfied that there is no substance in the petition, and, therefore, it must be dismissed with cost.

23. This petition is dismissed with cost, which we quantify at Rs.25,000/-. The petitioners have already deposited a sum of Rs.10,000/and we direct the petitioners to deposit the amount of Rs.15,000/- in this Court within one month from today. The amount as and when deposited shall be remitted to the Trust. The Trust is entitled to this cost.

(B.C. PATEL, J.)

csm./ (P.B. MAJMUDAR, J.)